

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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2004 JUN -7 P 4: 35
Civil Action No. 03- 10574-JLT
U.S. DISTRICT COURT
DISTRICT OF MASS.

Evgeny Okmyansky,
Plaintiff,

v.

Herbalife International of
America, Inc.,
Defendant

AFFIDAVIT OF EVGENY OKMYANSKY

1. I am the plaintiff in the above-captioned matter. I have personal knowledge of all matters asserted herein.
2. I have read the Amended Complaint in this action. I know all the allegations asserted therein to be true, with the exception of the matters asserted on information and belief, which matters I believe to be true.
3. At this time, I am a resident of Russia and Canada and I have permanent residency status in Canada.
4. In the period from 1997 through early 1999, I was in constant communication with the defendant's personnel in connection with my claims for reimbursement of the payments due me on account of the distributors improperly diverted from my "lineage". During this period of time, I was repeatedly informed that the defendant's investigation revealed that all of the claimed persons in fact belonged to my organization. I was further repeatedly

assured that an investigation was pending and that I would be receiving recalculated commissions.

5. At no time prior to February 9, 1999, did the defendant or any of its representatives inform me that I would not receive commissions, royalties, dividends or other payments on account of the improperly diverted distributors.
6. In the period from 1992 through present, I have timely received commissions, royalties, and dividends and other payments from the defendant, with the exceptions of the payments listed in paragraph 3, immediately above.
7. Given the defendant's repeated prior representations, I did not understand the letter of February 9, 1999, to be a final and unequivocal manifestation of the defendant's refusal to honor its contractual obligations. I believed that an error had occurred and I caused a letter dated March 18, 1999, to be sent to the defendant to clarify the situation.
8. I know of no contractual provision or any other authority which would allow the defendant to exercise discretion in determining the amount of the commissions, royalties, bonuses, and other payments due and payable on account of the individuals executing distributorship agreement listing me as a supervisor or to alter the formula pursuant to which such calculations are made. At all times relevant to this action, I have operated and continue to operate fully in accordance with the contract with the defendant, the terms of which are listed in my original application, the Rules Book and the Career Book.

9. At all times relevant to this action, when it was discovered or determined that distributors had signed a second contract listing *me* as their supervisor, such individuals were deleted from my organization and the appropriate amounts were deducted from the commissions, royalties, bonuses and other payments disbursed to me by the defendant.
10. I am unable to quantify precisely the amount of payments due and owed by the defendant or the identities of all of the diverted distributors because all of the information, including statistical and financial data, which would enable me to make such identifications and calculations is within the sole possession, control, and custody of the defendant. I know this to be true because the defendant issues periodic statements to me listing my organization and financial volume, royalties and dividends due and owed me for my other distributors. It is my understanding and belief that the defendant has similar information with respect to the "diverted" distributors. I also know this to be true because (a) I personally reviewed documents provided by the defendant, which contain, among other things, detailed tables with respect to some individuals containing financial and statistical information which I need to make precise calculations; and (b) all of the financial and statistical data has long been available through a password-restricted online databases maintained by the defendant on the Internet.

Signed this 05 day of June 2004 under the pains and penalties of perjury.


 Evgeny Okmynasky

CERTIFICATE OF SERVICE

I, Pavel Bespalko, hereby certify that I served the foregoing document upon the defendant by mailing the same via first-class mail, postage pre-paid, to its counsel Annapoorni Sankaran, Esq. of Greenberg & Traurig, at One International Place, 20th Floor, Boston, MA 02110 this ____ day of June, 2004.

Pavel Bespalko